


### Mine Cleanup and Abatement Order

<b>Responsible Party:</b>	Magma Power Company
<b>Parcel Controlled:</b>	APN 018-200-013-000
<b>Map:</b>	 <p><b>Attachment A – Parcel Map with Mine Locations</b></p>
<b>Waste Located on the Site:</b>	The mine sites on the properties listed above include the West End Mine, Manzanita, Central and Cherry Hill Mines, and several milling facilities. These mines and facilities include mine cuts, waste rock, tailings, mill waste, erodable mined slopes, and sediment within drainage swales, ditches, and a tributary to Sulphur Creek.
<b>Discharge:</b>	5C2 Report found mine tailings, and waste rock at and around the mines (5C2 Report , Pages 2-11, 2-14 and 2-15). This report also found evidence of erosion of these material into Sulfur Creek. Also, the report found slope stability problems associated with the mines 5C2 Report , Pages 2-13 and 2-15). Mercury mobilized by storm water runoff, slope failure, or water rock interaction from mine wastes at West End Mine, Manzanita, Central, Cherry Hill and Empire Mines, and several milling facilities either entered Sulphur Creek directly or entered unnamed intermittent tributary to Sulphur Creek.
<b>Ability to Control:</b>	<p>Magma Power Company leased the property for geothermal exploration and drilled a geothermal test well. This would include developing a road and pad for drilling. While exploring geothermal potential associated with the listed property, they had the ability to cleanup, and abate the discharge of mines waste from the mines. Specific activities could have included:</p> <ul style="list-style-type: none"> <li>• Relocating material piles away from waterways.</li> <li>• Placing barriers, such as grass covered berms, between mine materials and</li> </ul>

	<p>waterways.</p> <ul style="list-style-type: none"> <li>• Recontouring and revegetation of material piles and areas of surface disturbance by mining activity to reduce erosion.</li> <li>• Redirection of storm runoff around material piles and areas of surface disturbance to reduce erosion.</li> <li>• Stabilization of stream banks containing enriched mercury alluvium to minimize erosion during storm events.</li> </ul>
<p><b>Legal Theory Holding Responsible Party Accountable</b></p>	<p>Magma Power is subject to the Order because Magma Power held a lease interest in the property during the time when the waste piles were discharging mercury and other pollutants to surface waters, which caused exceedances of water quality objectives. Evidence that Magma Power held a leasehold interest in the property can be found in the documents referenced in Attachment B, which are in the files of the Central Valley Water Board. The waste piles are still present on the property.</p> <p>California Water Code (CWC) section 13304 authorizes the Regional Water Boards to issue cleanup and abatement orders to any person  who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance  Magma Power, by leasing portions of the property where mining waste piles were present, took responsibility for appropriately managing the discharges from these waste piles to the extent that their lease gave them the ability to do so. As these waste piles were eroding into surface waters during the time of Magma Power's leasehold interest, Magma Power qualifies a person who has, "caused or permitted waste to be discharged into waters of the state."</p> <p>Studies conducted during the development of a TMDL for the Cache Creek Watershed, including the CalFed 5C2 Report, determined that the erosion of materials from the waste piles present on the parcels that Magma Power controlled contributed to a condition of pollution, defined under CWC section as an alteration of the quality of waters of the state to a degree which unreasonably affects the waters for beneficial uses.</p> <p>The State Water Resources Control Board (State Board) has determined that, in addition to the initial release of pollutants into the environment, the passive release of pollutants is considered a "discharge" of waste for the purposes of determining liability under CWC section 13304. (State Board Order No. WQ 86-2, In the Matter of the Petition of Zoecon Corporation; State Board Order No. WQ 92-13, In the Matter of the Petitions of Wenwest, Inc., et al.) Although Magma Power did not create the waste piles that are still eroding into surface waters, the scope of Magma's lease indicates that Magma Power had some degree of ability to control the discharge of wastes, but failed to do so.</p> <p>The State Board has ruled that liability for a cleanup ordered under section 13304 is joint and several. (State Board Order No. WQ 90-2, Petition of Union Oil Company.) However, the State Board has declined to apportion liability among responsible parties, leaving that determination to the parties themselves. It is the responsibility of Magma Power to determine their responsibility relative to the other named dischargers, and to cooperatively address the tasks required of the responsible parties in the Order.</p>

	<p>The site's unique geophysical characteristics made it attractive to Magma Power's natural resource exploration – but exploration on this property carries potential liabilities as well as potential rewards. Magma Power should not be allowed to disclaim their responsibility for managing the wastes during the time of their ownership once their exploration proved fruitless.</p>
<p><b>Evidence in the Regional Water Board File</b></p>	<p><b>Attachment B</b> contains the documents showing that Magma Power Company, leased and did drilling on the property.</p>
<p><b>Photographic evidence pertaining to this parcel (if available)</b></p>	<p><b>Attachment C</b> is photographs showing mined locations on an aerial photo and the present conditions of some mined area and waste piles.</p>